IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

WP(C).No. 25375 of 2004(U)

PETITIONER:

MOHAN JAIDAS. S., NOW WORKING AS
SENIOR MANAGER, KELTRON COMPONENT COMPLEX LTD.,
KELTRON NAGAR, P.O. KALLIASSERI,
KANNUR-670 562.

BY ADV. SRI.K.RAMAKUMAR
SRI.B.PREMNATH (E)
SMT.SREEJA SOHAN.K.

RESPONDENTS:

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1. KERALA STATE ELECTRONICS DEVELOPMENT
CORPORATION, REPRESENTED BY ITS MANAGING
DIRECTOR, THIRUVANANTHAPURAM.

2. KELTRON COMPONENT COMPLEX LTD.,
REPRESENTED BY MANAGING DIRECTOR,
KELTRON NAGAR, P.O. KALLIASSERI,
KANNUR-670 562.

3. STATE OF KERALA, REPRESENTED BY ITS
CHIEF SECRETARY, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

4. THE SECRETARY, INDUSTRIES DEPARTMENT,
TRIVANDRUM.

5. MR. V. RAMKUMAR, NOW MANAGING DIRECTOR
KERALA STATE ELECTRONICS DEVELOPMENT CORPORATION
TRIVANDRUM-2.

6. MR.S. GOPALAKRISHNA PILLA,
NOW MANAGING DIRECTOR IN CHARGE,
KELTRON COMPONENT COMPLEX LTD.,
KELTRON NAGAR, P.O. KALLIASSERI,
KANNUR-670 562.

7. THE DIRECTOR OF VIGILANCE,

THE VIGILANCE DEPARTMENT, GOVERNMENT OF KERALA, TRIVANDRUM.

R1 & R2 BY ADV. SRI.T.P.KELU NAMBIAR (SR.)

SRI.M.GOPIKRISHNAN NAMBIAR

R3, R4 & R7 SHRI D. ANILKUMAR, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/3/2007, THE COURT ON 10/4/2007 DELIVERED THE FOLLOWING:

ORDER ON IN NOS.6814/05 & 3938/07

DISMISSED.

1. 10/4/2007 SD/- . T.R. RAMACHANDRAN NAIR, JUDGE.

APPENDIX

EXT.P1-TRUE COPY OF THE EXTRACT OF THE MINUTES OF THE COMPANY BOARD MEETING NO.140 DATED 27.6.2002

EXT.P2-TRUE COPY OF DO. DATED 7.9.2002

EXT.P3- DO. DT.19.12.2002

EXT.P4-TRUE COPY OF VIGILANCE COMPLAINT LAUNCHED BY THE PETITIONER DT.28.5.2003

EXT.P5-TRUE COPY OF LETTER SENT BY MANAGING DIRECTOR (IC) TO THE PETITIONER DATED 29.7.2003

EXT.P5(A)- DO. DATED 26.6.2003

EXT.P5(B)-TRUE COPY OF SHOW CAUSE NOTICE CUM MEMO OF CHARGES DATED 3.7.2003 SENT TO THE PETITIONER BY MANAGING DIRECTOR (IC)

EXT.P6-TRUE COPY OF THE RPELY SENT BY THE PETITOINER TO R6 DATED 20.8.2003

EXT.P7-TRUE COPY OF ORDER PASSED BY THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE DT.4.5.2004

EXT.P8-TRUE COPY OF THE COMMUNICATION SIGNE DBY THE WORKING PRESIDENT OF KELTRON EMPLOYEES UNION DT.15.7.2004

EXT.P9-TRUE COPY OF ENQUIRY REPORT DT.30.7.2004

EXT.P10-TRUE COPY OF THE SHOW CAUSE NOTICE DT.10.8.2004 ISSUED TO THE PETITOINER BY R6

EXT.P11-TRUE COPY OF THE EXTRACT OF THE SHOW CAUSE NOTICE

EXT.P12-TRUE COPY OF EXTRACT OF REPLY SUBMMITTED BY VINOD VENUGOPAL DT.18.7.2003 TO R6

EXT.P13-TRUE COPY OF EXTRACT FROM THE MINUTES OF THE ANNUAL GENERAL MEETING OF THE SHAREHOLDERS OF R2

EXT.P14-TRUE COPY OF DELEGATION OF POWER OF THE MANAGING DIRECTOR OF R2

EXT.P15-TRUE COPY OF ORDER DATED 10.9.2004 ISSUED BY R6 TO THE PETITIONERs
EXT.P16-TRUE COPY OF NEWS APPEARED IN MATHRUBHUMI DAILY DT.14.9.2004

EXT.P17-TRUE COPY OF DO. IN MALAYALA MANORAMA DAILY DT.14.9.2004

EXT.P18- DO. IN DESHABHIMANI DAILY DT.14.9.2004

EXT.P19-TRUE COPY OF APPEAL PETITION SUBMITTED BY THE PETITIONER DT.7.10.2004 BEFORE THE APPELLATE AUTHORITY

EXT.P20-TRUE COPY OF APPEALLATE ORDER PASSED BY R5

EXT.P21-TRUE COPY OF EXTRACT FROM THE MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS DATED 19.12.2002

RESPONDENTS' EXTS:

EXT.R2(A)-PHOTO COPY OF KELTRON CONDUCT, DISCIPLINE & APPEAL RULES 1986

EXT.R2(B)-TRUE COPY OF MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS, KELTRON COMPONENT COMPLEX LTD. DT.15.3.2002

EXT.R2(C)- TRUE COPY OF REPLY DT.30.8.2004 SUBMITTED BY THE PETITIONER TO R2

EXT.R2(D)-TRUE COPY OF OFFICE ORDER DT.6.4.2002

EXT.R2(E)-TRUE COPY OF DO. DATED 29.5.2003

EXT.R2(F)-TRUE COPY OF THE MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS OF KELTRON COMPONENT COMPLEX LTD. DT.6.9.2004

EXT.R2(G)-TRUE COPY OF EXTRACT OF THE BILL ISSUED TO THE PETITIONER

EXT.R2(H)TRUE COPY OF OFFICE ORDER DT.6.4.2002

EXT.R2(I)-TRUE COPY OF EXTRACT OF MEETING OF THE BOARD OF DIRECTORS OF R2

EXT.R2(J)-TRUE COPY OF LETTER DT.10.7.2003

EXT.R2(K)-TRUE COPY OF PERFORMANCE REPORT SUBMITTED BY THE PETITIONERs

EXT.R2(L)-TRUE COPY OF PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED 31.3.2003 OF R2

EXT.R2(M)-TRUE COPY OF EXTRACT OF THE BILL ISSUED TO THE PETITIONER FROM HOTEL HIGH LAND PARK, TVM. DATED 5.6.2003

EXT.R2(N)-TRUE COPY OF LETTER DT.12.8.2004 ADDRESSSED BY THE PETITIONER TO R2

EXT.R2(O)-TRUE COPY OF LETTER DT.13.8.2004 ADDRESSED BY R2 TO THE PETITIONERs

// TRUE COPY //

P.S. TO JUDGE

T.R. Ramachandran Nair, J.

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W.P.(C).NO.25375 of 2004-U

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Dated this the 10th day of April, 2007

JUDGMENT

The matter concerns challenge against the disciplinary proceedings initiated against the petitioner resulting in removal from service. Ext.P15 is the order passed by the disciplinary authority and Ext.P20 is the order passed by the appellate authority.

2. The petitioner is a Senior Manager under the second respondent, viz. Keltron Component Complex Limited. He was appointed as Managing Director in charge of the company on 6.4.2002. The second respondent is a subsidiary company of the first respondent, Kerala State Electornics Corporation. The petitioner was divested of the charge of Managing Director on 30.5.2003. Subsequently, he was issued a show cause notice along with a memo of charges marked as Exts.P5(a) and (b) in the writ petition. Various charges have been raised in the memo of charges and the allegations pertain to the actions of the petitioner while holding the charge of Managing Director. Exts.P5(a) and (b) were replied as per Ext.P6 by the

petitioner. Ext.P9 is the report of enquiry submitted by the Enquiry Officer. On the basis of the enquiry report, he was issued a show cause notice Ext.P10. Ext.P10 shows that the report of enquiry was forwarded along with the show cause notice. Thereafter, petitioner submitted a reply to the show cause notice. In the meanwhile, petitioner had approached this court challenging the enquiry proceedings itself on various grounds like victimisation and malafides, etc. On 24.8.2004 this court passed an interim order to the effect that "it is for the petitioner to file his explanation on Ext.P10. Thereafter, it will be open to the first respondent to pass orders in accordance with law but the orders as passed shall be implemented only after obtaining orders from this court." This interim order was modified on 9.9.2004 making it clear that in case the petitioner is aggrieved by the order passed by the second respondent, it will be open to the petitioner to pursue his statutory remedy before the appellate authority. It was further made clear that any orders thus passed either by the second respondent or the appellate authority will be subject to the result of the writ petition. Aggrieved by the order Ext.P15 whereby he was removed from service, the petitioner filed an appeal before the Chairman which was disposed of by Ext.P20. The penalties imposed on him by Ext.P15 is removal from service and recovery of an amount of Rs.1,25,478/- as compensation for the pecuniary loss caused to the company. This order was confirmed in the appeal and the penalties imposed have been found reasonable.

4. The petitioner has raised various grounds in the writ petition while challenging the orders. Along with I.A. No.3938/2007, the petitioner has filed an affidavit raising a new ground as additional ground 'H'. The ground taken is that in terms of the decisions of the Hon'ble Supreme Court particularly in E.C.I.L. v. Karunakar, it was mandatory to communicate the report of the enquiry before accepting or taking any action on the report and as that had not been done in the case, the penalty imposed is irregular, illegal and in violation of the principles of natural justice. It is alleged that serious prejudice has been caused to the petitioner by the failure to furnish the report before issuing the show cause notice.

5. The respondents have been given a further opportunity to file a counter affidavit to the above I.A. and they have duly filed a counter affidavit.

6. In the counter affidavit filed in the writ petition, the respondents have sought to justify the action against the petitioner and the orders passed by the disciplinary authority and the appellate authority. Along with the counter affidavit, various orders have been produced to show that the disciplinary action taken by the Managing Director is perfectly legal and the same is in accordance with the relevant rules and as authorised by the Board of Directors.

7. In the counter affidavit filed in I.A. No.3938/2007, it is contended that no prejudice has been caused to the petitioner due to the non-supply of

enquiry report prior to the issuance of Ext.P10 show cause notice. The contentions raised are that a copy of the enquiry report was forwarded to the petitioner along with Ext.P10 on 10.8.2004 directing him to submit a reply within seven days. On 12.8.2004 the petitioner sought two more weeks time to submit the reply (produced as Ext.R2(n). As per Ext.R2(o) reply issued by the second respondent, two more weeks time was given to furnish the reply. It is pointed out that in Ext.R2(n) the petitioner had no complaint that he was not served with a copy of the enquiry report and on that account any prejudice had been caused to him. It is further pointed out that immediately on receipt of the show cause notice the present writ petition was filed in which no contention has been raised that any prejudice has been caused to him on account of the non-supply of the enquiry report. The petitioner submitted his reply marked as Ext.R2(i) in which he has not raised a contention that any prejudice has been caused to him on account of the non-supply of the enquiry report prior to Ext.P10 notice. It is also averred that by way of Ext.R2(i) he has submitted a detailed objection to the findings in the enquiry report. The second respondent further averred that in the appeal filed as Ext.P19 also, the petitioner had not raised any ground that he had been prejudiced in any way on account of the non-supply of the enquiry report prior to Ext.P10. It is also pointed out that even after the writ petition was amended to incorporate challenge against Exts.P15 and P20, no such ground had been originally urged and only by the present I.A.

the petitioner has raised an additional ground.

8. Heard Shri K. Ramakumar, counsel for the petitioner and Shri T.P. Kelu Nambiar, learned Senior Counsel and Shri M. Gopikrishnan Nambiar, counsel for the respondents. Shri Ramakumar raised the following arguments:

a) that the non furnishing of the enquiry report before the disciplinary authority decided to accept it and before the issuance of Ext.P10 show cause notice clearly vitiates the entire proceedings culminating in imposition of the penalty and hence Ext.P15 as affirmed in Ext.P20, is liable to be declared as illegal; and

b) the penalty has been imposed by the Managing Director who is not competent to impose such a penalty on the petitioner.

9. In support of the argument that non-furnishing of the enquiry report itself vitiates the entire proceedings, learned counsel for the petitioner relied upon the decisions of the Honourable Supreme Court in **Union of India v. Mohd. Ramzan Khan** (AIR 1991 SC 471) and **Managing Director, ECIL, Hyderabad v. B. Karunakar** (AIR 1994SC 1074) and the decision of a Division Bench of this court in Writ Appeal No.1779/2005 and connected cases. In contra, learned counsel for the respondents relied upon the decisions of the Honourable Supreme Court in **Managing Director, ECIL, Hyderabad v. B. Karunakar** (AIR 1994SC 1074 = (1993) 4 SCC 727)), **Canara Bank and others v. Debasis Das and others**

((2003) 4 SCC 557), **Divisional Manager, Plantation Division, Andaman & Nicobar Islands v. Munnu Barrick and others** ((2005) 2 SCC 237), **Canara Bank v. V.K. Awasthy ((**2005) 6 SCC 321) and **Syndicate Bank and others v. Venkatesh Gururao Kurati** ((2006) 3 SCC 150) to contend for the position that the non-furnishing of the report has not prejudiced the petitioner and at any rate, no prejudice has been shown to have been established and merely because of the non-furnishing of the report, the proceedings are not vitiated.

10. Therefore, it has to be examined whether the non-furnishing of the report prior to the issuance of the show cause notice proposing the penalty itself vitiates the penalty imposed and whether in the absence of any prejudice seen to have been caused to him, the proceedings are valid or not. It has also to be examined whether failure of the petitioner to raise it in the reply to the show cause notice and also in the appeal filed before the appellate authority will estop him from raising the said ground in these proceedings.

11. The Honourable Supreme Court in AIR 1991 SC 471, held that "while the delinquent is not entitled to report when the inquiry is conducted by the disciplinary authority, he is entitled to copy of report when inquiry is conducted by the Inquiry Officer." A Constitution Bench of the Honourable Supreme Court in AIR 1994 SC 1074 ((1993) 4 SCC 727) considered the question afresh in view of the conflict between the above

decision in AIR 1991 SC 471 and AIR 1988 SC 1338. After considering the various aspects in the light of Article 311 of the Constitution of India and in the light of the well accepted principles of natural justice, their Lordships of the Supreme Court held in paragraph 7 (iv) and (v) in the following terms:

> " (iv) In the view that we have taken, viz. that the right to make representation to the disciplinary authority against the findings recorded in the inquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down i Mohd. Ramzan Khan's case (AIR 1991 SC 471) (supra) should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the Inquiry Officer before the disciplinary authority records its findings on the charges levelled against him. Hence, question (iv) is answered accordingly."
>
> (v) The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence, to direct reinstatement of the employee with back wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites

to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion hat the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Courts/Tribunals find that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the courts/Tribunals set aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered should

> invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."

Their Lordships have declared that the question has to be tested on the theory of prejudice which has been caused to the employee. It was held that the court/tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished. The court should avoid resorting to shortcuts.

12. In the light of the dictum laid down in AIR 1994 SC 1074 it has to be accepted that mere non-furnishing of the report itself will not vitiate the penalty imposed which is confirmed by the order passed by the appellate authority herein. Learned counsel for the petitioner further relied upon the Bench decision in Writ Appeal No.1779/2005 and connected cases. In that case, this court found that it was a case of harassment and victimisation, and hence the charge sheet and the enquiry report were quashed. The third aspect considered was about the non-furnishing of the enquiry report. There, the question was examined in paragraphs 35 and 37 in the light of the dictum laid down in AIR 1994 SC 1074. Paragraph 37 of the judgment

shows that their Lordships were of the view therein regarding certain findings of the report that "the Enquiry Officer on the other hand was finding fault with the petitioner for not obtaining the order in writing by the Managing Director before participating in the tender. As already noticed earlier the enquiry Officer did not make any attempt to ascertain whether the Managing Director had in fact given authorisation to the petitioner and from Ext.P17 affidavit filed, by the then Managing Director that he had authorised the petitioner to submit the tender. We are now informed that the appellants have taken a decision to realise 75% of the loss sustained by the appellants on account of the tender to KLDB from the former Managing Director which makes it clear that the act of the petitioner was not at all unauthorised." It was further held that "though it would not be necessary for the disciplinary authority to discuss in detail about the enquiry conducted by the Enquiry Officer it was necessary for the disciplinary authority to consider the enquiry report before it was accepted. Petitioner was not given an opportunity to show that the enquiry report was wrong. Records produced did not show that the disciplinary authority had in fact considered the enquiry report before accepting the same." The above findings show that issue considered therein was different from the facts of this case. This court was pleased to consider the matter on the merits itself and the proceedings were set aside not on the ground of non-furnishing of the report alone but on the merits of the charges and a direction was issued

to the enquiry officer to reopen the enquiry and allow the petitioner therein to participate in the same after giving him the assistance of a defence assistant. Apparently, the facts of the said case are different from the facts of this case.

13. This is a case where, to the show cause notice the petitioner duly submitted a reply wherein no contentions have been raised that non-furnishing of the report along with the show cause notice has prejudiced him in taking his defence against the acceptance of the report by the disciplinary authority before proposing the penalty. Going by the reply to the show cause notice petitioner has answered various findings contained in the report. It is pertinent to note that the petitioner had not raised any contention that non-supply of the report has prejudiced him in furnishing the reply. In the memorandum of appeal filed against the order Ext.P15 (Ext.P19) also, he has not raised any ground that he had been prejudiced in any way because of the non-furnishing of the enquiry report prior to the show cause notice issued. Thus, it is a case where only in the affidavit filed along with I.A. No.3938/2007 alone the petitioner has chosen to raise this as an additional ground. Therefore, the question is whether in such circumstances, the proceedings are liable to be quashed merely on the ground of non-furnishing of the report.

14. In the decision reported in **State of U.P. Harendra Arora and another** ((2001) 6 SCC 392) the question was examined whether even

though in the statutory rules considered therein there was a provision for furnishing a copy of the report, whether the said omission could be fatal to the order imposing penalty. After considering the decision of the Supreme Court in AIR 1994 SC 1074, it was held in paragraph 12 in the following terms:

> "12. Thus, from the case of ECIL it would be plain that in cases covered by the constitutional mandate i.e. Article 311(2), non-furnishing of enquiry report would not be fatal to the order of punishment unless prejudice is shown. If for infraction of a constitutional provision an order would not be invalid unless prejudice is shown, we fail to understand how requirement in the statutory rules of furnishing copy of the enquiry report would stand on a higher footing by laying down that question of prejudice is not material therein."

Their Lordships further examined whether even an infraction of a statutory provision in every case would make the consequent action void or invalid. It was held that in respect of procedural provisions other than of a fundamental nature, the theory of substantial compliance would be available and in such cases objections on this score have to be judged on the touchstone of prejudice. The test would be, whether the delinquent officer had or did not have a fair hearing. On the facts of the said case it was held in paragraph 24 after examining the question whether by the non-furnishing of the report, the delinquent officer has suffered any prejudice, in the following terms:

> "Undisputably, after submission of enquiry report the State Government sent a show cause notice to the delinquent pursuant to which he had shown cause and the disciplinary authority after

> considering the said show cause reply, passed the order of dismissal. It is not the stand of the respondent that in the absence of the enquiry report he could not submit an effective show cause reply before the order of dismissal was passed. Neither from the order passed by the Tribunal nor the High Court would it appear that the respondent had raised this point there that he could not file an effective show cause reply in the absence of enquiry report nor has it been stated that in the show cause reply it was complained that the delinquent had not been served with a copy of the enquiry report. From these facts, it is not possible to hold that the respondent has been prejudiced by non furnishing of enquiry report."

Thus, it is clear that if the employee has failed to raise a question that prejudice has been caused to him because of the non-furnishing of the report either on the plea that he could not submit an effective reply to the show cause notice or that the findings of the disciplinary authority while accepting the report could not have been replied effectively without the copy of the report, the contention cannot be accepted. Therefore, it can be said that merely because of the non-furnishing of the report no prejudice has been caused to the employee. This point was again considered in (2003) 4 SCC 557 and other decisions relied upon by the counsel for the respondents. The following words in paragraph 10 of the decision reported in (2003) 4 SCC 557 are apposite to the context herein:

> "10. It is to be further noted that in the appeal before the Appellate Authority findings of the inquiry officer were challenged and, therefore, the question of any prejudice does not arise. Since the employee had the opportunity to meet the stand of the Bank, it was to his advantage, and opportunity for personal hearing was also granted, though Regulation 6(18) does not even speak of granting such an opportunity. Keeping in view what was observed in B. Karunakar case there was no question of violation of principles of natural justice."

In (2005) 2 SCC 237 the question whether non -supply of copy of report vitiates the proceeding, was considered. It was held that "principles of natural justice cannot be put in a straitjacket formula. It must be viewed with flexibility. In a given case, where a deviation takes place as regards compliance with the principles of natural justice, the court may insist upon proof of prejudice before setting aside the order impugned before it. The employee must show sufferance of prejudice by non-obtaining a copy of the enquiry report. The court will refrain from interfering with an order, having regard to "useless formality theory" in a given case."

15. In (2005) 6 SCC 321, the principles were considered in a similar set of facts where the employee did not raise the violation of principles of natural justice before the appellate authority. That was a case where the writ petition was initially dismissed finding that no prejudice was caused to the writ petitioner and there was no violation of the principles of natural justice. It was reversed in writ appeal by a Division Bench of this court wherein a direction was issued allowing the writ petitioner to submit a detailed representation to the disciplinary authority in respect of the enquiry proceedings and findings. The sustainability of the above judgment was the subject matter of dispute before the Apex Court. After elaborately considering the issue in the light of the relevant principles and the judgment in ECIL case, their Lordships noted in paragraph 5 of the judgment that the employee did not raise any ground relating to violation of principles of

natural justice either in the memorandum of appeal or at the time of personal hearing before the Appellate Authority. Additionally, there was no material placed by the employee to show as to how he had been prejudiced. It was also held in paragraph 6 that "it is to be further noted that in the appeal before the Appellate Authority findings of the inquiry officer and disciplinary authority were challenged and, therefore, the question of any prejudice does not arise." Again, in paragraph 22 their Lordships held in the following terms:

> "22. It is to be noted that the detailed charge-sheets were served on the respondent employee who not only submitted written reply, but also participated in the proceedings. His explanations were considered and the inquiry officer held the charges to have been amply proved. He recommended dismissal from service. the same was accepted by the disciplinary authority. The proved charges clearly established that the respondent employee failed to discharge his duties with utmost integrity, honesty, devotion and diligence and his acts were prejudicial to the interest of the Bank. In the appeal before the prescribed Appellate Authority, the findings of the inquiry officer were challenged. the Appellate Authority after analysing the materials on record found no substance in the appeal."

Ultimately, it was held that the decision of the Division Bench regarding alleged violation of principles of natural justice cannot be sustained. It is therefore clear that merely because of the fact that the enquiry report was not furnished, the penalty cannot be interfered with. The failure to show that prejudice has been caused to the employee will entail rejection of the challenge against the order passed by the disciplinary authority and the appellate authority on that score. The issue has to be considered in the

touchstone of the prejudice alleged to have been caused because of the non-furnishing of the report. If the employee has failed to raise it is an issue, as in this case, either in the reply to the show cause notice or in the appeal memorandum and if he has challenged the findings effectively, then it is implied that no prejudice has been caused because of the non-furnishing of the report alone. Absence of a hearing before the authority decided to accept the enquiry report will not therefore vitiate the further action.

16. In (2006) 3 SCC 150, the issue was again considered relating to a question whether non-supply of documents by the prosecution will automatically will amount to violation of the principles of natural justice. It was held that "even then, the prejudice allegedly caused by the non-supply of those documents must be established by the delinquent. It is well settled law that the doctrine of principles of natural justice are not embodied rules. It cannot be put in a straitjacket formula. It depends upon the facts and circumstances of each case. To sustain the allegation of violation of principles of natural justice one must establish that prejudice has been caused to him by non-observance of principles of natural justice."

17. The issue has to be considered whether any prejudice has been caused to the petitioner by the non-supply of the enquiry report. As rightly pointed out by the learned Senior Counsel appearing for the respondents, in the reply (Ext.R2(n)) submitted by the petitioner, he has not raised any contention that prejudice had been caused to him and that he could not

effectively submit a reply as the enquiry report was not furnished prior to the show cause notice. In this case, along with the show cause notice findings of the Enquiry Officer were also furnished to him and he had filed a detailed reply regarding the enquiry as well as the proposed penalty. Therefore, before final decision was taken as per Ext.P15, the report was forwarded and only after considering his reply final action was taken. Therefore, no prejudice has been caused on that behalf. Learned counsel for the petitioner even though contended that the disciplinary authority should have furnished the copy of the report before deciding to accept the report, as held by the Hon'ble Supreme Court in ECIL' case, the issue will have to be considered on the question whether any prejudice has been caused to him. It is true that as held by the Honourable Supreme Court in AIR 1994 SC 1074 the supply of the enquiry report forms part of the first stage of the proceedings and the second stage starts by the issuance of show cause notice. In the said decision of the Apex Court itself their Lordships have held hat merely because of the non-supply of the report the order imposing penalty should not be set aside mechanically and the issue will have to be decided on the question whether any prejudice has been caused to him. The principles laid down in the subsequent decisions of the Apex Court are also against the contentions of the petitioner. Herein, apart from the fact that petitioner had effectively submitted a reply to the show cause notice, even in the appeal filed challenging Ext.P15, he did not raise any such grounds.

It is seen that the appellate authority has considered all the contentions before passing Ext.P20 order. In view of the above, I reject the contentions raised by the petitioner that because of the failure to supply the enquiry report prior to the issuance of Ext.P10, the penalty imposed is vitiated and the order is liable to be quashed on that ground.

18. The next aspect is whether the Managing Director is competent to impose the penalty. The argument is developed like this. Ext.P14 contains the delegation of powers to the Managing Director and clause 2 confers power of punishment. The said clause shows as follows:

> "To take disciplinary action including suspension against employees of the company subject to following disciplinary procedures/rules of the Company. Cases involving punishment of removal/dismissal of employees shall however be reported to the Board for appropriate decision."

Hence, it is contended that the Board alone could have imposed the penalty. Further, it is pointed out that herein the petitioner was holding the charge of Managing Director and the allegations leading to the disciplinary action pertains to that period and therefore the Managing Director is not competent to impose any punishment like removal from service.

19. Shri T.P. Kelu Nambiar, learned Senior Counsel appearing for the respondents produced before me the Memorandum of Association and Articles of Association of the second respondent for perusal and he further

relied upon clauses 93(i) and 96(a) therein. They are extracted below:

> "93(i) To appoint officers, clerks and servants for permanent, temporary or special service as the board may from time to time think fit, to determine their powers and duties and fix their salaries and emoluments and to require security i such instances and such amount as the Board may think fit and to dismiss, remove or suspend any such officers, clerks and servants, on proper grounds.
>
> 96(a) The Board may from time to time entrust the Managing Director all or any of the powers the Board with or without restrictions."

It is stated that as per Ext.R2(b) Resolution dated 15.3.2002 in the meeting of the Board of Directors of the Company, it was resolved to implement the Keltron Conduct Discipline and Appeal Rules 1986 to the employees of Keltron Component Complex Limited. In the said rules produced as Ext.R2 (a), Rule 19 deals with penalties and Rule 19(f) specifically deals with removal from service. Rule 20 deals with procedure for imposing major penalties. Rule 21(3) is important which says that "if the competent authority having regard to its findings on all or any of the articles of charges is of the opinion that any of the penalties specified in rule 19 should be imposed on the employee it shall, notwithstanding anything contained in Rule 22 make an order imposing such penalty." The definition of the term "competent authority" in sub-rule (3) of Rule 21 means the Managing Director or any other authority or authorities so designated by the Managing Director. Therefore, it is contended that clause 2 of Ext.P14 has lost its relevance. Further, as the rules have come into force based on Ext.R2(b)

resolution, it is argued that clause 2 of Ext.P14 is no longer in force. There was a further resolution produced as Ext.R2(f), wherein the Board authorised the Managing Director to finalise the disciplinary proceedings initiated against the petitioner.

20. The petitioner was never appointed as the Managing Director and he was only given the charge of Managing Director. When the disciplinary action was initiated, he has admittedly been working as Senior Manager. Therefore, as is clear from Rule 21(3) of Ext.R2(a), the competent authority herein being the Managing Director, is empowered to impose the punishment including the major penalty of removal from service. Even though general powers have been conferred on the Board of Directors as per Clause 93(i) of the Memorandum of Association and Articles of Association, clause 96(a) of the same gives power to the Board to entrust the Managing Director all or any of the powers of the Board with or without restrictions. The respondents have produced Ext.R2(f) resolution dated 6.9.2004 whereby the Board of Directors authorised the Managing Director to award suitable penalties including removal from service as deemed fit in the case in respect of the disciplinary action initiated against the petitioner. Therefore, there is a specific delegation and authorisation in regard to the power to impose penalty in respect of the disciplinary proceedings initiated against the petitioner. It is not contended that the Board has no power to delegate its general powers. Further, it is also to be noticed that Ext.P14

has lost its effect after the Keltron Conduct, Discipline and Appeal Rules 1986 were brought into force. What is contended is that as the petitioner was exercising the powers of Managing Director in charge and the allegations pertains to the said period, the present Managing Director is not competent to impose the penalty. The said contention raised in such general terms cannot be accepted in view of the position emerging on a reading of the various resolutions and the relevant clauses of Ext.R2(a) Rules. Therefore, it is clear that the Managing Director had the power to impose the penalty as per Ext.P15. Therefore, the second ground is also found against the petitioner.

20. No other contentions regarding the sufficiency of the charge, findings of the disciplinary and appellate authority and proportionality of the punishment, have been argued before me. Further, in proceedings under Article 226 of the Constitution of India, this court cannot act as an appellate authority in re-appreciating any evidence in the enquiry or in regard to the findings of the enquiry officer and the proceedings imposing penalty as well as the order passed by the appellate authority.

Hence, the writ petition fails and the same is dismissed. No costs.

(T.R. Ramachandran Nair, Judge.)

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